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OFFICE  
UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
05-01-1 P 1:04

CIVIL DOCKET NO: 05-CV-10849 (RGS)

\*\*\*\*\*  
HELEN RUNGE

PLAINTIFF

VS.

WALTER J. KELLY,  
KERRY L. BLOOMINGDALE, M.D.,  
AND SUNBRIDG NURSING AND  
REHABILITATION CENTER

DEFENDANTS  
\*\*\*\*\*

**ANSWER AND JURY CLAIM OF THE DEFENDANT  
KERRY L. BLOOMINGDALE, M.D.**

**I. JURISDICTION**

The defendant Kerry L. Bloomingdale, M.D. (Dr. Bloomingdale) admits that he is a resident of and has a principal place of business in Massachusetts. Dr. Bloomingdale, however, denies the allegations regarding jurisdiction, and in particular denies that he acted under color of state law, and he denies that the amount of in controversy, at least as to so much of the Complaint as concerns him, exceeds \$75,000.

**II. VENUE**

Without waiving his above denials of the plaintiff's allegations regarding jurisdiction, if the Court finds that the allegations here are properly within its' jurisdiction, the defendant Dr. Bloomingdale admits the allegations regarding venue.

**III. PARTIES**

1. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph one of the plaintiff's Complaint.

2. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph two of the plaintiff's Complaint.

3. The defendant, Dr. Bloomingdale, admits the allegations contained in paragraph three of the plaintiff's Complaint.

4. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph four of the plaintiff's Complaint.

#### IV. BACKGROUND

6. (sic) The defendant Dr. Bloomingdale admits that plaintiff was born in 1915, but is without sufficient information to admit or deny the remaining allegations in paragraph six of plaintiff's Complaint.

7. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph seven of the plaintiff's Complaint.

8. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph eight of the plaintiff's Complaint.

9. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph nine of the plaintiff's Complaint.

10. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph ten of the plaintiff's Complaint.

11. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph eleven of the plaintiff's Complaint.

12. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph twelve of the plaintiff's Complaint.

13. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph thirteen of the plaintiff's Complaint.

14. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph fourteen of the plaintiff's Complaint.

15. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph fifteen of the plaintiff's Complaint.

16. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph sixteen of the plaintiff's Complaint.

17. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph seventeen of the plaintiff's Complaint.

18. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph eighteen of the plaintiff's Complaint.

19. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph nineteen of the plaintiff's Complaint.

20. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph twenty of the plaintiff's Complaint.

21. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph twenty-one of the plaintiff's Complaint.

22. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph twenty-two of the plaintiff's Complaint.

23. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph twenty-three of the plaintiff's Complaint.

24. The defendant, Dr. Bloomingdale, admits that on or about January 22, 2003, the plaintiff was admitted to Sunbridge, a skilled care facility, but he is without sufficient information to admit or deny the remaining allegations of paragraph twenty-four of the plaintiff's Complaint.

25. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph twenty-five of the plaintiff's Complaint.

26. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph twenty-six of the plaintiff's Complaint.

27. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph twenty-seven of the plaintiff's Complaint.

28. The defendant, Dr. Bloomingdale is without sufficient information to admit or deny the allegations of the last two sentences of paragraph twenty-eight of plaintiff's Complaint, but he denies the remaining allegation of this paragraph.

29. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph twenty-nine of the plaintiff's Complaint.

30. The defendant, Dr. Bloomingdale, denies so of much paragraph thirty of the plaintiff's Complaint that appears to allege that he directly or indirectly insisted that the plaintiff take

medication or that it would be forced upon her if she refused; he is without insufficient information to admit or deny the remaining allegations of this paragraph.

31. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph thirty-one of the plaintiff's Complaint.

32. The defendant, Dr. Bloomingdale, denies the allegations contained in paragraph thirty-two of the plaintiff's Complaint.

33. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph thirty-three of the plaintiff's Complaint.

34. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph thirty-four of the plaintiff's Complaint.

35. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph thirty-five of the plaintiff's Complaint.

36. The defendant, Dr. Bloomingdale, admits that on April 29, 2003 he performed a mental health diagnosis and treatment evaluation of the plaintiff in her room, but he denies the remaining allegations of paragraph thirty-six of the plaintiff's Complaint.

37. The defendant, Dr. Bloomingdale, denies the allegations contained in paragraph thirty-seven of the plaintiff's Complaint.

38. The defendant, Dr. Bloomingdale, denies the allegations contained in paragraph thirty-eight of the plaintiff's Complaint.

39. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations of the first three sentences of paragraph thirty-nine of the plaintiff's Complaint, but he denies the remaining allegations of this paragraph.

40. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph forty of the plaintiff's Complaint.

41. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph forty-one of the plaintiff's Complaint.

42. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph forty-two of the plaintiff's Complaint.

43. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph forty-three of the plaintiff's Complaint.

44. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph forty-four of the plaintiff's Complaint.

45. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph forty-five of the plaintiff's Complaint.

46. No responsive pleading is required of the defendant, Dr. Bloomingdale, to paragraph forty-six of the plaintiff's Complaint, because the paragraph sets out various regulations that it alleges the defendant, nursing facility is required to adhere to. To the extent that said paragraph could be read to allege any misconduct, wrongdoing or negligence directly or indirectly against Dr. Bloomingdale, the defendant Dr. Bloomingdale denies any such allegations.

47. The defendant, Dr. Bloomingdale, denies the allegations of the last sentence of paragraph forty-seven of the plaintiff's Complaint, and he is without sufficient information to admit or deny the remaining allegations of this paragraph.

48. The defendant, Dr. Bloomingdale, is without sufficient information to admit or deny the allegations contained in paragraph forty-eight of the plaintiff's Complaint.

49. The defendant, Dr. Bloomingdale, denies the allegations contained in paragraph forty-nine of the plaintiff's Complaint.

### **COUNT I**

#### **42 U.S.C. § 1983**

50. The defendant, Dr. Bloomingdale restates his above answers to paragraphs 1 through 49 of the plaintiff's Complaint.

51. The defendant, Dr. Bloomingdale denies the allegations of paragraph fifty-one of the plaintiff's Complaint, including sub-paragraphs a-d.

52. The defendant, Dr. Bloomingdale denies the allegations of paragraph fifty-two of the plaintiff's Complaint.

### **COUNT II**

#### **42 U.S.C. § 1985**

53. The defendant, Dr. Bloomingdale restates his above answers to paragraphs 1 through 52 of the plaintiff's Complaint.

54. The defendant, Dr. Bloomingdale denies the allegations of paragraph fifty-four of the plaintiff's Complaint.

55. The defendant, Dr. Bloomingdale denies the allegations of paragraph fifty-five of the plaintiff's Complaint.

56. The defendant, Dr. Bloomingdale denies the allegations of paragraph fifty-six of the plaintiff's Complaint.

### **COUNT III**

#### **State Law Claim**

57. The defendant, Dr. Bloomingdale restates his above answers to paragraphs 1 through 56 of the plaintiff's Complaint.

58. The defendant, Dr. Bloomingdale denies the allegations of paragraph fifty-eight of the plaintiff's Complaint.

The next unnumbered paragraph states requests for relief, which requests are denied by the defendant, Dr. Bloomingdale.

### **COUNT IV**

#### **State Law Claim**

59-60. Count IV, including paragraphs fifty-nine and sixty and the subsequent unnumbered paragraph, purports to state a claim against a defendant other than the defendant, Dr. Bloomingdale, so no response is required of him to the allegations of this Count.

### **COUNT V**

#### **State Law Claim**

61-62. Count V, including paragraphs sixty-one and sixty-two and the subsequent unnumbered paragraph, purports to state a claim against a defendant other than the defendant, Dr. Bloomingdale, so no response is required of him to the allegations of this Count.

THE DEFENDANT KERRY BLOOMINGDALE, M.D. ASSERTS THE FOLLOWING AFFIRMATIVE DEFENSES:



**FIRST AFFIRMATIVE DEFENSE**

The plaintiff's Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

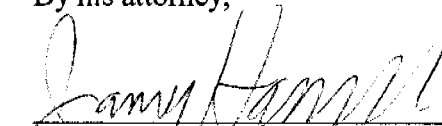
If the plaintiff was injured because of intentional and/or negligent action, any such action was done by individuals and/or entities not directed nor controlled by the defendant Dr. Bloomingdale.

THE DEFENDANT KERRY BLOOMINGDALE, M.D. RESERVES THE RIGHT TO ASSERT ADDITIONAL AFFIRMATIVE DEFENSES AS THE DISCOVERY PROCESS MAY SHOW TO BE WARRANTED.

**JURY CLAIM**

THE DEFENDANT KERRY BLOOMINGDALE, M.D. CLAIMS A TRIAL BY JURY ON ALL ISSUES.

Respectfully submitted,  
For the Defendant,  
Kerry Bloomingdale, M.D.  
By his attorney,

A handwritten signature in cursive script, appearing to read "James S. Hamrock, Jr.", written over a horizontal line.

James S. Hamrock, Jr.

BBO # 219400

Hamrock & Tocci  
101 Main Street, 18th Floor  
Cambridge, MA 02142  
(617) 496-5370

**CERTIFICATE OF SERVICE**

FILED  
CLERKS OFFICE

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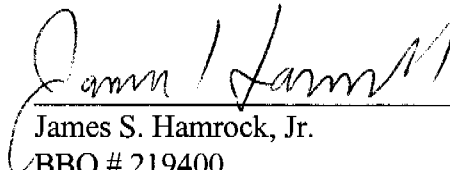
I, **James Hamrock**, Attorney representing Defendant, **Kerry L. Bloomingdale, M.D.**, hereby certify that I have this **31<sup>st</sup> day of May, 2005** served the within:

NOTICE OF APPEARANCE

ANSWER AND JURY CLAIM OF THE DEFENDANT, KERRY L. BLOOMINGDALE, M.D.

upon the attorney of record, by mailing copies of same, postage paid, as follows:

Glenn Davis, Esq.  
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